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January 19, 1987

Mr. Theodore A. Ferris, Staff Director
Joint Legislative Budget Committee
1716 West Adams
Phoenix, Arizona 85007

Re: I87-013 (R87-007)

Dear Mr. Ferris:

You have asked several questions relating to reductions in appropriations for the operations of state government for the remainder of fiscal year 1986-1987. The first is whether the Legislature may enact one omnibus act that would reduce or terminate the appropriations contained in various existing appropriations acts without enacting repealer or amendatory legislation respecting those existing appropriations acts.

In your request you asked us to consider whether the Legislature was authorized "to let the original appropriations acts for FY 1987 remain in effect, and to enact an 'ex-appropriations' bill, which would revert all or a portion of amounts previously appropriated. In other words, the 'positive' appropriations contained in various acts of 1986 would be offset, in part, by 'negative' appropriations or 'ex-appropriations' in an omnibus 1987 law."

We conclude that the Legislature may not enact an omnibus appropriations reduction act in the form of the ex-appropriations act described in your request. The Legislature may, however, accomplish this goal by reducing the appropriations set forth in the prior acts, provided it complies with certain constitutional provisions discussed in this opinion.

The authority of the Legislature is contained in art. IV of the Arizona Constitution which provides in pt. 1, § 1 that "[t]he legislative authority of the State shall be vested in a

Legislature . . . .", and sub-paragraph 14 of which provides "[t]his section shall not be construed to deprive the Legislature of the right to enact any measure." (Emphasis added.) The Arizona Supreme Court has interpreted these provisions:

> The generally accepted doctrine is that except for those things necessarily inhibited by the Federal or state constitution, the state legislature may pass any act, because the whole power not prohibited by the state and Federal constitutions is retained in the people and their elected representatives in the State.

Earhart v. Frohmiller, 65 Ariz. 221, 224, 178 P.2d 436, 437-438 (1947) (citations omitted).

Our inquiry, therefore, is whether the Arizona Constitution "inhibits" the enactment of the omnibus ex-appropriations act described in your request.

Because the enactment of the omnibus ex-appropriations act contemplated in your request would result in the revision of all or parts of a number of existing acts of the Legislature to eliminate or reduce the expenditures in those acts, we think that Ariz. Const., art. IV, pt. 2, § 14 is applicable. It provides:

> No Act or section thereof shall be revised or amended by mere reference to the title of such Act, but the Act or section as amended shall be set forth and published at full length.

In applying this section of the Constitution the Arizona Supreme Court has said:

> All this provision means is that if the whole act is amended it shall be set forth and published as amended; but, if one or more sections only are amended, they alone shall be set forth in full as amended. . . . The mischief aimed at by its adoption was the common practice, still followed by the

> Congress of the United States, of amending the statutes by simply directing the insertion, omission, or substitution of certain words without setting out in full the act as it was intended it should be after amendment. "In the absence of a constitutional provision of this character," says the court in Fletcher v. Prather, 102 Cal. 413, 36 Pac.658, "a section of an act might be and often was, amended in one or more of four ways: First, by striking out certain words; second, by striking out certain words and inserting others; third, by inserting certain words; and, fourth, by adding other provisions." If any one of these methods was followed, no one could possibly know by reading the act itself what the law was, but before a legislator could vote understandingly upon such an amendment, or one called upon to construe the law after its adoption could do so intelligently, it would be necessary for him to ascertain how the original act with all previous amendments, if any, read. This placed an unnecessary burden upon both and the purpose of this provision was to prevent legislation in any such manner.

In re Miller, 29 Ariz. 582, 594-595, 244 P. 376, 379-380 (1926) (citations omitted).

This provision of the Constitution, on the other hand, does not apply to an act which does not purport to amend a prior act and which is complete within itself even though it incidentally may amend or repeal another law in some aspects. See State v. Pelosi, 68 Ariz. 51, 199 P.2d 125 (1948); General Elec. Co. v. Telco Supply, Inc., 84 Ariz. 132, 325 P.2d 394 (1958).

Your request indicates to us that the proposed act would purport to revise or amend a number of existing appropriations acts by changing the provisions of the those acts as provided in the new omnibus act without setting forth at full length the existing acts as changed by the new omnibus act. That, we think, art. IV, pt. 2, § 14 prohibits.

The Legislature's alternatives, therefore, for reducing existing appropriations are (a) the repeal of existing appropriations acts and the enactment of new appropriations acts, or (b) the amendment of existing appropriations acts in compliance with art. IV, pt. 2, § 14 to change the level of authorized expenditures.

You have advised us that irrespective of the alternative chosen, the Legislature prefers to reduce the amount of an agency's total appropriation without the Legislature's allocating reductions among specific budget classes within an agency's revised appropriation. You have asked us, in view of that preference, to consider the necessity for suspending the operation of A.R.S. § 35-173(E) which prohibits a budget unit from transferring funds to or from personal services or employee related expenditures without the recommendation of the Joint Legislative Budget Committee and the approval of the Director of the Department of Administration.

The Legislature may avoid allocating reductions to specific budget classes and also avoid the application of A.R.S. § 35-173(E) by enacting new appropriations acts or amending existing appropriation acts to provide only lump sum appropriations to all of the budget units. Lump sum appropriations, not being restricted legislatively to maximum expenditures in particular budget classes or items, are not subject to the provisions of subsections C, D & E of A.R.S. § 35-173 relating to transfers of funds from one budget class to another or from one program to another. See Hutchins v. Swinton, 56 Ariz. 451, 108 P.2d 580 (1940); State Board of Health v. Frohmiller, 42 Ariz. 231, 23 P.2d 941 (1933).

The Legislature also may enact new appropriations acts or amend existing appropriations acts that contain total appropriations to budget units but which require each budget unit to submit to the Legislature the specific amount that the budget unit allocates to each of the budget classes or items or programs that the Legislature provides in the appropriation for the budget unit. The budget unit's allocation, pursuant to language in the appropriations acts so providing, then could become the law and could not be changed without further legislation or compliance with A.R.S. § 35-173. This approach satisfies the Legislature's objective of not allocating appropriations by specific amounts among several budget classes but it does not obviate the applicability of A.R.S. § 35-173.

If the Legislature were to select this approach and also want to permit subsequent transfers to or from personal services and employee related expenditures without compliance with A.R.S. § 35-173(E), the Legislature must enact appropriate legislation to accomplish that objective.

Perhaps some may question whether the Legislature may enact appropriations acts that require of, and thereby delegate to, budget units the allocation of their appropriations among the various budget classes or programs provided in appropriations acts. So long as the Legislature fixes the amount of the total appropriation and provides the budget classes and standards sufficient to guide the budget units in making the allocations, we find no unlawful delegation of legislative power.

Delegation of legislative authority is discussed in Lake Havasu City v. Mohave County, 138 Ariz. 552, 559, 675 P.2d 1371, 1378 (App. 1984):

> It is a well settled principle of law that the state legislature may not delegate its power to make laws. [Citations omitted.] The nondelegation principle has been aptly described as follows:
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> One of the settled maxims in constitutional law is that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

Tillotson v. Frohmiller, 34 Ariz. 394, 407, 271 P. 867, 871 (1928); accord State Compensation Fund v. De La Fuente, 18 Ariz. App. 246, 501 P.2d 422 (1972). However, this does not mean that the Legislature cannot confer authority upon an agency or department to exercise its discretion in administering the law. See, e.g., Peters v. Frye, 71 Ariz. 30, 223 P.2d 176 (1950); Hernandez v. Frohmiller, 68 Ariz. 242, 204 P.2d 854 (1949).

In Peters v. Frye, our Supreme Court made the following important distinction:

> It appears to us that counsel for plaintiffs, . . . has failed to differentiate between the delegation of power to enact laws, which cannot be done, . . . and the conferring of authority to administer a law in a manner that involves the exercise of administrative discretion.

71 Ariz. at 34, 223 P.2d at 179 (citations omitted). The Peters court went on to cite the following instructive language from Thomson v. Barnett, 344 Ill. 62, 176 N.E. 108 (1931):

> [W]hile the Legislature may not divest itself of its proper functions, or delegate its general legislative authority, it may still authorize others to do those things which it might properly, yet cannot understandingly or advantageously do itself. Without this power legislation would become oppressive, and yet imbecile. Local laws almost universally call into action, to a greater or less extent, the agency and discretion, either of the people or individuals, to accomplish in detail what is authorized or required in general terms. The object to be accomplished, or the thing permitted may be specified, and the rest left to the agency of others, with better opportunities of accomplishing the object or doing the thing understandingly.

Id. at 35, 223 P.2d at 179. All that is required for the proper delegation of such discretion is that it be defined with sufficient clarity to enable the agency or board to know their legal bounds. Hernandez v. Frohmiller.

You also have asked whether the Legislature is required to enact more than one bill to accomplish a reduction of the appropriations authorized in existing appropriations acts.

Ariz. Const., art. IV, pt. 2, § 20 prompts your question, and it provides:

> The general appropriation bill shall embrace nothing but appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt. All other appropriations shall be made by separate bills, each embracing but one subject.

The object of the general appropriation bill is to provide funds to meet expenses of the state's different departments, offices, agencies and institutions. Carr v. Frohmiller, 47 Ariz. 430, 56 P.2d 644 (1936). Ariz. Const., art. IV, pt. 2, § 20 makes clear that all such appropriations for expenses of the state's departments, offices, institutions and the public schools may be combined in one general appropriation bill. Appropriations for purposes other than those denominated in § 20 must be enacted in separate bills.

We conclude, therefore, that the Legislature may enact in one bill all of the reductions in existing appropriations acts that provided funds to meet the authorized expenses of the state's different departments, offices, agencies and institutions and the public schools irrespective of the number of acts that the Legislature may have enacted to make those appropriations.

We next consider your question whether legislation to reduce the existing appropriations for the operation of state government for the remainder of the current fiscal year becomes operative immediately if such legislation is not enacted as an "emergency measure".

We conclude that such legislation operates immediately upon approval by the Legislature and the Governor without being enacted as an emergency measure.

Ariz. Const., art. IV, pt. 1, § 1 provides generally that acts enacted by the Legislature do not become operative until ninety days after the close of the session of the Legislature enacting the acts in order to allow for a referendum to the people on such enactments. The Constitution excepts two classes of acts from the referendum provision: emergency measures and acts "to provide appropriations for the support and maintenance of the Departments of the State and of State institutions . . . ." Ariz. Const., art. IV, pt. 1, § 1(3). Such appropriations measures become operative immediately upon approval by the Legislature and the Governor.

We have no doubt that a legislative enactment to reduce existing appropriations for the support and maintenance of the departments and institutions of the state nevertheless is an act providing appropriations for the support and maintenance of the government within the scope of art. IV, pt. 1, § 1.

Finally we consider whether the Legislature must enact appropriations measures that allocate statutorily established funding levels such as that set, for example, for state aid to education.

Arizona Constitution, art. IX, § 5 provides in its last sentence: "No money shall be paid out of the state treasury, except in the manner provided by law." The Arizona Supreme Court has said that this provision means:

> that the people's money may not be expended without their consent either as expressed in the organic law of the state or by constitutional acts of the legislature appropriating such money for a specific purpose.

Crane v. Frohmiller, 45 Ariz. 490, 495-496, 45 P.2d 955, 958 (1935) (citation omitted). Also see Cockrill v. Jordan, 72 Ariz. 318, 319, 235 P.2d 1009, 1010 (1951), where the court said of this provision of the Constitution:

> This has been construed to mean that no money can be paid out of the state treasury unless the legislature has made a valid appropriation for such purpose and funds are

available for the payment of the specific claim.

(Citations omitted.)

Our initial inquiry respecting statutes that establish levels of state aid or assistance is whether the statutes themselves constitute appropriations. The Arizona Supreme Court, when applying art. IX, § 5, has said that an appropriation need not be made in any particular form of words nor in express terms. All that is required is a clear expression of the Legislature that money be expended for a particular purpose. O'Neil v. Goldenetz, 53 Ariz. 51, 85 P.2d 705 (1938); Crane v. Frohmiller, 45 Ariz. 490, 45 P.2d 955 (1935). A valid appropriation payable from general funds must fix a maximum amount. Id. If a statute that establishes levels of state aid constitutes a valid appropriation, any reductions in the levels of appropriation in that statute may be accomplished only by specific amending or repealing legislation. See Hudson v. Brooks, 62 Ariz. 505, 158 P.2d 661 (1945).

On the other hand, if a statute establishing funding levels is not a valid appropriation, then funding depends upon enactment by the Legislature of subsequent valid appropriations. See Cockrill v. Jordan.

From our examination of statutes establishing funding levels of state aid to education, we can conclude that the statutes do not evidence a clear legislative intent that they constitute appropriations. For example, state aid for equalization assistance in education is computed pursuant to A.R.S. § 15-971(D). That statute provides in subsection E: "Equalization assistance for education shall be paid from appropriations for that purpose to the school districts as provided in § 15-973." A.R.S. § 15-973(A) provides: The state board of education shall apportion state aid from appropriations made for such purpose . . . ." These provisions indicate to us that the Legislature intended to enact separate appropriations to fund the assistance specified in A.R.S. §§ 15-971 and 15-973.

When statutes that provide for levels of assistance such as those discussed above cannot be implemented without the enactment of separate valid appropriations acts, our inquiry then is whether the Legislature may be compelled to enact

appropriations measures that fund the assistance levels established by statute.

The courts have concluded that they have no authority to order the Legislature to act:

> This section [of an initiative act] also directs the legislature to appropriate not less than 1% of the payroll of the state's service. This means nothing. It is the constitutional duty of the legislature without specific direction to make all necessary appropriations to pay the expenses of state agencies. There is no legal method of compelling the legislature to act.

Hernandez v. Frohmiller, 68 Ariz. 242, 253-254, 204 P.2d 854, 862 (1949). Also see Reinhold v. Board of Supervisors of Navajo County, 139 Ariz. 227, 232, 677 P.2d 1335, 1340 (App. 1984) ("neither may the judiciary encroach upon the legislative function, and budgeting matters are a part of such a function.").

Moreover, the courts will not substitute their judgment in budgeting matters:

> If reasonable men could differ as to the propriety of the action taken by the board of supervisors, then it cannot be said it abused its discretion. The trial court cannot substitute its judgment in cases such as this for that of the board of supervisors. The board did not act arbitrarily or capriciously. . . . [T]here was a reason for its rejection of the budget and neither this court nor the trial court can gainsay the reasonableness of action taken by the board of supervisors. The trial court does not act as a "Super Board of Supervisors".

Board of County Supervisors v. Rio Rico Volunteer Fire District, 119 Ariz. 361, 364-365, 580 P.2d 1215, 1218-1219 (App. 1978).

We are not aware of any provision of the Constitution that requires funding at any particular level of activity undertaken by state government. The most positive statement in

the Constitution on this subject appears in Ariz. Const., art. XI, § 10, which provides in part:

> In addition to such income [received from the rental of state land set aside by the enabling act] the Legislature shall make such appropriations, to be met by taxation, as shall insure the proper maintenance of State educational institutions, and shall make such special appropriations as shall provide for their development and improvement.

This section does not in our view compel full funding for any particular statutory state aid formula.

In discussing the mandate of the Arizona Constitution respecting the financing of the state's school systems, the Arizona Supreme Court said:

> A school financing system which meets the educational mandates of our constitution, i.e., uniform, free, available to all persons aged six to twenty-one, and open a minimum of six months per year, need otherwise be only rational, reasonable and neither discriminatory nor capricious.
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> A school financing system which has a rational and reasonable basis and which meets the educational mandate of our constitution should, unless otherwise discriminatory or capricious, be upheld.

Shofstall v. Hollins, 110 Ariz. 88, 90-91, 515 P.2d 590, 592-593 (1973).

Sincerely,

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